IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5980 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHIMANLAL A SUTARIA - Petitioner(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR GIRISH PATEL for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 16/11/2006

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction and/or order quashing and setting aside the impugned order dated 1-8-1996 by which

petitioner was imposed punishment of reducing the salary of the petitioner to the minimum for two years.

2. Facts leading to the present Special Civil Application are that the petitioner joined the services of the respondent School on 14-7-1970 as Asst. Teacher. He was promoted at Vice Principal on 28-10-1985 and then as Principal on 6-11-1986. At the relevant time, he was working as Principal, Government Secondary School, Gandhinagar. That while he was working as Principal, Government Secondary School, Sector 15, Gandhinagar during 1987-88, the Government grant worth Rs.1,45,000/- was sanctioned by letter dated 22-3-1988 for purchase of instruments and materials and the said amount was to be spent before 24-3-1988. According to the petitioner, he collected the names of the business houses from the office of the school, called for the prices and purchased educational instruments and materials worth Rs.1,21,795/-. That he was served with a charge sheet dated 5-11-1992 alleging that he has violated the rules by purchasing the items worth Rs.1,21,795/- without advertisement in the newspaper because the items purchased were more than Rs.10,000/-. It was alleged that the petitioner has shown lack of integrity by accepting

the tender of the relatives of Shri Jayesh Bhanubhai Raval, a teacher of Physics. On receipt of the said charge sheet, he asked for necessary documents to enable him to give his reply but the same was not responded and therefore, he wrote another letter dated 20th May 1993 pointing out that no response was forthcoming from the Government regarding his request for documents. No documents were supplied and reserving his right to give detailed reply after receipt of the necessary documents, petitioner submitted his reply dated 22-12-1993. He denied the allegation and he explained that he was required to use the grant within two days, otherwise, the grant was to lapse. It was further submitted by him that considering the earlier instances and the similar method was adopted by the Principal of other schools, he has purchased the materials as required by the school. It was also pointed out that he never knew that the persons from whom he purchased were the relatives of Shri Jayesh Raval. The departmental inquiry was initiated against the petitioner and on conclusion of the inquiry, the Inquiry Officer submitted its report and held that so far as charge No.2 with regard to lack of integrity and purchasing the items from the relatives of Shri Jayesh Raval, a teache of Physics, the same was not held proved.

However, for charge No.1, the petitioner was found to be guilty i.e. purchasing the goods without inviting any tenders i.e. not following the required procedure. That the petitioner was served with the show cause notice along with inquiry report by communication dated 16-1-1996 and the petitioner was called upon to show cause why the punishment as per rule 6 of the Gujarat Civil Services (Disciplinary and Appeal) Rules, 1971 (for short “the Rules”) should not be imposed. The petitioner replied to the same and the respondent Deputy Secretary, Education Department by order dated 1-8-1996 disagreeing with the findings of the Inquiry Officer held both the charges proved against the petitioner and imposed the impugned punishment. Being aggrieved by the same, the petitioner has preferred the present Special Civil Application.

3. Apart from the fact that considering the charge No.1 proved against the petitioner, the punishment is too harsh, the learned advocate appearing on behalf of the petitioner has vehemently submitted that the impugned order is in breach of principles of natural justice and without following due procedure as required under rule 10 of the Rules. Relying upon rule 10 of the Rules as well

as the judgment of the Hon'ble Supreme Court in the case of SBI and others V. Arvind K. Shukla reported in affidavit-in-reply 2001 SC 2398, it is submitted that when a Disciplinary Authority disagrees with the finding of the Inquiry Officer, then in that case, the Disciplinary Authority is required to assign reasons for the same which is required to be served upon the delinquent and thereafter issuing show cause notice, further order can be passed. It is submitted that when the Inquiry Officer did not hold the petitioner guilty for charge No.2, in that case, when the Disciplinary Authority disagreed with the same, then the Disciplinary Authority was required to assign reasons for the same and in the present case, the Disciplinary Authority while disagreeing with the finding of the Inquiry Officer, without giving opportunity to the petitioner, the impugned order has been passed which is required to be quashed and set aside.

4. It is also further submitted that if the Disciplinary Authority relies upon the report of the Inquiry Officer and imposed the punishment holding the petitioner guilty so far as charge No.1 is concerned, in that case, the punishment itself is disproportionate to

the charge held to be proved against the petitioner, as in that case, it is only a question of not following the proper procedure and so far as other charges with regard to lack of integrity is concerned, the same is not proved against the petitioner and therefore, it is requested to allow the present Special Civil Application.

5. While opposing the present Special Civil Application, Ms Maithili Mehta, learned AGP has relied upon the judgment of the Hon'ble Supreme Court in the case of Ram Kishan V. Union of India and others reported in 1995(6) SCC 157, more particularly para 10 and it is submitted that considering the above, the impugned order is just and proper and the same is not in breach of principles of natural justice, as so far as one charge is concerned, the same was held to be proved against the petitioner. It is submitted that the show cause notice was already served upon the petitioner on the basis of one of the charge proved against the petitioner and he was required to show cause and the Disciplinary Authority agreed partly to the said report. When the learned AGP was called upon to make their stand clear, whether the impugned order has been passed on the basis of the charge proved against the petitioner or the Disciplinary

Authority has imposed the punishment disagreeing with the report of the Inquiry Officer with regard to charge No.2 and holding them proved, the learned AGP is not in a position to make their position clear. Under the circumstance, it appears that the impugned order has been passed holding the petitioner guilty of both the charges i.e. one of the charge also which is not held to be proved against the petitioner by the Inquiry Officer. In that view of the same, the judgment of the Hon'ble Supreme Court in the case of Ram Kishan (supra) will not be of any assistance to the respondent.

6. On going through the judgment of the Hon'ble Supreme Court in the case of S.B.I. (supra), the facts before the Hon'ble Supreme Court were identical to that of the present Special Civil Application. As held by the Hon'ble Supreme Court in the case of S.B.I. (supra), when a Disciplinary Authority disagrees with conclusion and finding arrived at by the Inquiry Officer, the Disciplinary Authority is required to record its tentative reasons for disagreement and the reasons should be given to delinquent officer to represent before ultimate finding is recorded and non-furnishing of reasons to delinquent officer is fatal and vitiates

ultimate order. Apart from that rule 10 of the Rules is very clear, which reads as under:

> *"10. **Action on the inquiry report.** -(1)The Disciplinary Authority, if it is not itself the Inquiry Authority may, for reasons to be recorded by it in writing, remit the case to the Inquiry Authority for further inquiry and the Inquiry Authority shall thereupon proceed to hold the further inquiry according to the provisions of rule 9, as far as may be.*
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> *(2) The Disciplinary Authority shall, if it disagrees with the finding of the Inquiry Authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidence on record is sufficient for the purpose.*
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> *(3) If the Disciplinary Authority having regard to its finding on all or any of the articles of charge is of the opinion that any of the penalties specified in items (1) to (3) of rule 6 should be imposed on the Government servant it shall not with standing anything contained in rule 11 make an order imposing such penalty;*
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> *Provided that in every case, where it is necessary to consult the commission, the record of the inquiry shall be forwarded by the Disciplinary Authority to the commission for its advice and such advice shall be taken into consideration before*

making any order imposing any penalty on the Government servant-

(4) (i) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in items (4) to (8) of rule 6 should be imposed on the Government servant, it shall-

(a) furnish to the Government servant a copy of the report of the inquiry held by it and findings on each article of charge, or where the inquiry has been held by an Inquiry Authority, appointed by it, a copy of the report of such authority and statement of its findings on each article of charge together with brief reasons for its disagreement, if any, with the findings of the Inquiry Authority.

(b) give to the Government servant a notice stating the penalties proposed to be imposed on him and calling upon him to submit within fifteen days of receipt of the notice or such further time not exceeding fifteen days, as may be allowed, such representation as he may wish to make on the proposed penalty on the basis of the evidence adduced during the inquiry held under rule 9.

(ii) In every case in which it is necessary to consult the Commission the record of the inquiry, together with a copy of the notice given under sub-clause (b) of clause (i) and the representation made

in pursuance of such notice, if any, shall be forwarded by the Disciplinary Authority to the Commission for its advice.

(b) The Disciplinary Authority shall after considering the representation; if any, made by the Government servant, and the advice given by the Commission determine what penalty, if any should be imposed on the Government servant and make such order as it may deem fit."

7. Considering the fact on hand, the petitioner was charge sheeted for two charges, after conclusion of the inquiry, the Inquiry Officer held the petitioner guilty of one charge only and for the second charge, the petitioner was not found guilty. Petitioner was served with a show cause notice for one charge and the petitioner submitted his reply to the same. However, the Disciplinary Authority disagreeing with the finding and report of the Inquiry Officer with regard to charge No.2, imposed punishment and passed the impugned order without giving any opportunity to the petitioner. Thus, the same is in breach of principles of natural justice as well as in breach of rule 10 of the Rules which is reproduced hereinabove. Under the circumstance, the impugned order requires to be quashed and set aside and the matter is to be remanded to the Disciplinary Authority for passing

appropriate order in accordance with law after complying with the provisions of rule 10 of the Rules.

8. For the reasons stated above, the petition succeeds in part. The impugned order dated 1-8-1996 passed by the respondent is hereby quashed and set aside and the matter is remanded to the Disciplinary Authority for passing appropriate order in accordance with law considering the observation made hereinabove and after following the due procedure as required under rule 10 of the Rules. The said exercise to be completed within a period of six months from the date of receipt of this order. Rule is made absolute to the aforesaid extent. No costs.

(M.R.SHAH,J.)

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